ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Petition of the Association for Local Telecommunications Services for Declaratory Ruling Regarding Section 706	)	CC Docket No. 98-78

COMMENTS OF BELL ATLANTIC ON ALTS' PETITION FOR A DECLARATORY RULING

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Table of Contents

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Introduction and Summary

The Commission should dismiss the petition filed by the Association for Local Telecommunications Services ("ALTS") as a transparent attempt to derail the forbearance petitions that have already been filed under Section 706 by Bell Atlantic and other local exchange carriers to encourage widespread deployment of advanced technologies.

First, ALTS tries to turn the deregulatory mandates of the Telecommunications Act on their head by telling the Commission that it must impose more regulations in order to promote competition and innovation. Yet, the policies being pursued by ALTS and its members have just the opposite effect. By insisting that interstate Internet traffic is local traffic eligible for reciprocal compensation, ALTS is creating a revenue stream that largely eliminates the incentive for competitors to invest in their own advanced

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

technologies to provide competing services to residential customers in rural, suburban and urban areas. The reason is simple: if ALTS members were to deploy competing services to these customers, the reciprocal compensation gravy train would end.

Second, in reality, what is needed to promote innovation and competition is less, not more, regulation. Forcing incumbent carriers to make their investments in advanced technologies available to competing carriers as unbundled network elements would discourage incumbents from investing in advanced technologies in the first place. And where competing carriers can simply lease the incumbents' investment at unbundled rates, the competing carriers would have no incentive to make their own investment in advanced technologies to compete with the incumbent.

Third, to the extent that ALTS claims incumbent carriers are pursuing policies that will hinder efforts by competitors to provide advanced data services, at least in Bell Atlantic's case, ALTS is simply wrong.

I. ALTS' Policy of Pursuing Reciprocal Compensation for Internet Traffic Discourages Innovation and Deters Local Competition;

Ironically, at the same time it argues here that the FCC should take steps to promote innovation and competition, ALTS is simultaneously pursuing policies that have the opposite effect. ALTS' proposal to apply reciprocal compensation to Internet traffic encourages competing carriers to make minimal investments in facilities to service Internet Service Providers ("ISPs") and to ignore residential customers.

The Act's reciprocal compensation provisions do not apply to interstate traffic. As the Commission has repeatedly held, Internet traffic is jurisdictionally interstate.

Where two local carriers exchange Internet traffic, that traffic is not subject to the Act's reciprocal compensation provisions because those provisions apply only to local – not interstate – traffic.

ALTS previously filed a petition asking the Commission to declare – correctly – that Internet traffic is jurisdictionally interstate. *Petition by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, CCB-CPD 97-30 (June 20, 1997). ALTS and its members have changed course and now claim that they are entitled to reciprocal compensation for all Internet traffic. They make this claim even though, as the Commission itself has recognized, reciprocal compensation is available only for local calls – i.e., calls that originate and terminate within the same local calling area – and even though Internet traffic is in no sense reciprocal. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd 15499, ¶1034 (1996).

The effect of the policy ALTS is pursuing is to deter competition and investment. If a competing carrier has only ISPs as customers, it needs to make only a nominal investment in network facilities to deliver traffic to the ISPs. In exchange for that nominal investment, it would receive reciprocal compensation for every minute of traffic delivered to the ISPs – often more than the incumbent carrier receives in local exchange revenue from the originating line.[2]

[2] A simple example makes the point. A residential customer who uses an ISP's service for an average of only two hours a day, would generate a payment to the terminating carrier of $18.00 per month (assuming a reciprocal compensation rate of 0.5 cents per minute times the 3600 minutes the end user would generate in a month). The originating carrier that provides local service to that residential customer, however, will receive a flat rate of only about $13.00 per month on average to provide basic residential

Once the competing carrier begins receiving this reciprocal compensation gravy train, it has no incentive to sign up local customers or to invest in advanced technologies to serve them. Whatever local revenues the competing carrier might gain by winning local customers will be offset by the reduction in the reciprocal compensation and the cost of building out its network. It is Bell Atlantic and the other incumbent carriers that must invest in more network facilities – without compensation – to handle the growth Internet traffic to competing carriers.

Even beyond the problems inherent in any scheme that pays reciprocal compensation, it appears that many competing carriers are playing games with the scheme to make the gravy train even bigger. These games rise to the level of fraud upon incumbent carriers and regulatory agencies alike.

The whole theory behind ALTS' efforts to obtain reciprocal compensation for Internet calls is that the caller and the ISP are located in the same local calling area. This theory is wrong because the call to the ISP is merely a method of obtaining access to the ISP to complete an interstate call. It is no different than a call made to a Feature Group A line to place an out-of-state call. Even though the caller's line and the Feature Group A line are located in the same local calling area, the Commission has always looked to the ultimate destination of the call to determine that the traffic to the Feature Group A line is interstate. *Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, 4 FCC Rcd 8448 (1989); *Teleconnect Company v. Bell*

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service -- a rate that often does not cover the cost of the service. Therefore, the originating carrier would not only have to turn over to the terminating CLEC in reciprocal compensation every penny of revenue it receives from its end user, but it would have to pay the CLEC an additional $5.00 per month.

Telephone of Pennsylvania, et al, 10 FCC Rcd 1626, 1629 (1995); *aff'd sub nom, Southwestern Bell Telephone Company v. FCC*, 116 F.3d 593 (D.C. Cir. 1997). The same is true of calls to ISPs. Since the ISP is merely providing a method of access for the caller to reach an out-of-state destination, calls to the ISP's access line are interstate.

Nonetheless, it appears that many competing carriers are not even following ALTS' theory. Many competing carriers are claiming reciprocal compensation for Internet calls they receive from Bell Atlantic customers located in one local calling area and then deliver to ISPs located in a different local calling area. As shown on Attachment 1, the Bell Atlantic customer dials a local number and Bell Atlantic hands the call off to the competing carrier. The competing carrier, in turn, delivers the call to the ISP in a different local calling area, but nonetheless bills Bell Atlantic for reciprocal compensation as if it were a local call.

The effect on Bell Atlantic is a double whammy. Bell Atlantic loses the opportunity to collect toll rates or access charges for these calls and at the same time pays the competing carrier reciprocal compensation.

This whole scheme works because competing carriers are misusing NXX codes. They are assigning telephone numbers from NXX codes associated with specific local calling areas to ISPs that are not physically located within those same areas. The purpose of these improper number assignments is to ensure that calls to the competing carrier's ISP from Bell Atlantic's customers are billed as local calls, even though they are in fact toll calls. Bell Atlantic is thus cheated out of its toll revenues and pays reciprocal

II. Forbearance From Existing Regulatory Requirements – Not the Creation of New Ones – is Needed to Promote Innovation and Competition;

ALTS proposes to make Bell Atlantic's investment in new and advanced technology subject to the investment-deterring rules in place for the current network – namely, requirements that Bell Atlantic sell advanced new services to competitors at a discount and that it make the underlying technology available on an unbundled basis at rates based on forward-looking economic cost.

Bell Atlantic will have more incentive to invest in xDSL and other advanced technologies when it is freed from regulatory rules that limit its ability to earn a return that is commensurate with the risks of those investments. If Bell Atlantic must lease its advanced technologies to competitors at rates based on the forward-looking economic cost of those investments, investors will put their money elsewhere. At most, and only if it is successful, Bell Atlantic can recover little more than its original costs when it deploys advanced technologies that are subject to TELRIC regulation. *See* Bell Atlantic White Paper at 15-17, Attached to Bell Atlantic 706 Petition; Declaration of Thomas W. Hazlett, Attachment A to Bell Atlantic 706 Reply Comments.

There is no procompetitive reason why Bell Atlantic should be required to provide xDSL electronics on an unbundled basis as ALTS requests. In determining what elements an incumbent must make available, the Commission "shall consider whether access to proprietary network elements is "necessary," and whether the failure to provide access to other network elements would "impair" the ability of the requesting carriers to provide service. 47 U.S.C. § 251(d); ALTS Petition at 14-17. Regardless of whether xDSL electronics are proprietary, neither the "necessary" or "impair" standard is met

here. In either case, competing carriers can provide their own xDSL service by purchasing their own xDSL electronics and attaching them to unbundled xDSL-capable loop.

The electronics that carriers will use to provide xDSL service are not bottleneck or essential facilities. Bell Atlantic has no market share in xDSL electronics because it has not deployed any yet. ALTS Petition at 8. Competing carriers have the same ability to procure and deploy xDSL electronics as Bell Atlantic. Imposing an unbundling obligation on Bell Atlantic for xDSL electronics would not further any competitive purpose of the Act, but would simply relegate Bell Atlantic to the role of construction company and equipment lessor to the competing carrier industry.

ALTS' preferred regime of unbundling xDSL electronics would require Bell Atlantic to take all the risk of deployment – competitors can share in successful innovations by buying xDSL services at a discount, but avoid sharing any failures which are charged only to Bell Atlantic shareholders. As a result, ALTS' members will be less likely to install advanced technologies in residential areas where the return is risky – to the extent that they are interested in serving residential customers at all. ALTS' members will have every incentive merely to resell Bell Atlantic service in economically marginal areas. A dual deterrent to facilities-based competition thus will be at work: Bell Atlantic will have less incentive to deploy xDSL, while competitors will have the incentive merely to resell.

Deregulation of new technologies, not the extension of regulation to them, will fulfill the Congressional intent of encouraging the widespread deployment of advanced technologies. Under the deregulation Bell Atlantic proposes, competitors can buy loops

from Bell Atlantic, collocate in its central offices, and then put their own electronics on those loops. Bell Atlantic 706 Petition at 21. To the extent Bell Atlantic deploys xDSL widely, CLEC competitors may be spurred to react, and vice versa – as long as CLECs do not merely take xDSL electronics at a discount.

It is true that even absent regulatory relief Bell Atlantic plans a fairly wide roll-out of xDSL in areas where demand is proven and the costs of reaching customers is relatively low. But the mandate of 706, and the intent of Congress, was to foster the deployment of advanced services to all Americans. Without regulatory relief that enables incumbents to earn profits that are commensurate with the riskiness of their investments, it is unlikely they will deploy advanced technology outside major metropolitan areas where the customer base is less dense, Internet usage is lower and the network has longer copper loops.

Finally, the contention that Bell Atlantic's deployment of advanced technology is driven merely by the desire to catch up to the 78,000 route miles of fiber laid nationwide by CLECs, ALTS Petition at 7, is silly. Bell Atlantic alone has over 5,500,000 miles of fiber in the ground (more than AT&T, MCI, Sprint, WorldCom and Qwest combined) and has been a leader in deploying advanced technologies from ISDN to SONET. Bell Atlantic 706 Reply Comments at 13. Bell Atlantic will continue to pioneer new technologies and to drive xDSL to places where no CLEC goes, at the same time that it responds to facilities-based high speed data competition from cable, satellite and CLEC providers. But it needs regulatory relief to broaden the scope of its advanced broadband deployment.

III. ALTS Claims that Bell Atlantic has Impeded Local Competition Are False;

While ALTS makes vague and generalized claims that incumbent carriers aren't meeting the requirements of the Act, in Bell Atlantic's case, those claims simply aren't true. Bell Atlantic has not only met the Act's requirements for interconnection, unbundling and collocation, it has exceeded them.

First, Bell Atlantic's efforts to implement the Act's requirements are evident in the significant amount of local competition that already exists in its region. Bell Atlantic has spent more than $1 billion and hundreds of thousands of person-hours on market-opening measures. More than one million customers are now served by competing carriers in the Bell Atlantic region. In addition, Bell Atlantic has installed over 346,000 interconnection trunks to competing carriers and has exchanged over 8 billion minutes of traffic over those trunks so far this year.

Bell Atlantic is also providing competing carriers with the network elements and information they need to offer their own advanced services. For example, Bell Atlantic has committed to provide xDSL-conditioned loops to its competitors in its interconnection agreements that have been approved by state commissions, and will do so just as it has provided ordinary unbundled loops to competitors. In addition, Bell Atlantic will disclose technical requirements and network changes affecting the interoperability of xDSL technology.

Second, and more specifically, ALTS alleges that in proceedings before the New York Commission "Bell Atlantic also has refused to provide 56 kbps loops to CLECs as UNEs." ALTS Petition at 13. ALTS is wrong. When ALTS' counsel, Mr. Canis, asked

"[d]oes New York currently offer a 56 or 64 kilobit unbundled loop?" Bell Atlantic's witness responded "[y]es, premium loops." *Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996,* NY PSC Case No. 97-C-0271, Minutes of Technical Conference at 1577-78 (Dec. 3-5, 1997). And when Mr. Canis asked on follow up "[t]hose are considered parts of the premium loop?" Bell Atlantic's witness responded "[y]es." *Id.*

Third, ALTS alleges that during proceedings before the New York Commission, Bell Atlantic stated that it "will provide CLECs only with conditioned copper wire, even if it requires construction of new loop facilities . . . rather than provide access to a circuit that employs xDSL electronics." ALTS Petition at 15. The proceedings referenced by ALTS never addressed the issue of xDSL electronics. Rather, the cited portion of the transcript addresses a completely different issue: unbundling loops currently served through Integrated Digital Subscriber Line Carrier ("IDLC") technology. Because it is technically infeasible for Bell Atlantic to unbundle IDLC loops where the electronics are incorporated into the switch, Bell Atlantic's only alternative is to provide the competing carrier with a copper loop or a loop served on a non-integrated Subscriber Line Carrier facilities. And in nearly all cases, an alternative copper loop will already be in place.

Fourth, ALTS asserts that incumbent carriers are refusing to interconnect with competing carriers for data traffic. ALTS Petition at 12. Again, ALTS is wrong. Ever since Bell Atlantic began interconnecting with competing carriers, the vast majority of the traffic exchanged has been data traffic, most of it destined for the Internet. Moreover,

Bell Atlantic has already negotiated interconnection arrangements with at least one member of ALTS for advanced data services – i.e., Frame Relay – and is prepared to negotiate comparable interconnection arrangements with other competing carriers.

Fifth, ALTS complains about the collocation arrangements that its members must obtain to combine network elements. But the Act only requires incumbent carriers to provide "access" to network elements "in a manner that allows requesting carriers to combine such elements." 47 U.S.C. § 251(c)(3). And it requires collocation as the only method of "access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6) (emphasis supplied). If ALTS is unhappy with the Act, it should petition Congress, not the Commission.

Moreover, Bell Atlantic is not only providing access to network elements as the Act requires, it has negotiated to provide arrangements that go well beyond what the Act requires. For example, in New York, Bell Atlantic has already agreed to provide preassembled switching sub-platforms that competing carriers need only connect to a loop to provide local service to their customers. In addition, Bell Atlantic has agreed to provide alternative methods of access to network elements in New York, such as assembly rooms, assembly points, shared collocation cages and secured "cageless" collocation arrangements. *See* Bell Atlantic-New York Methods For CLEC Combinations of Unbundled Network Elements, filed in *Proceedings on Motion of the Commission to Examine Methods by which Competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements,* NY PSC Case 98-C-0690 (May 27, 1998). Since these arrangements were developed through negotiations to meet the unique needs of New York, there is no need for the Commission to reopen its collocation

proceedings and promulgate ALTS' wish list of new rules as a "one size fits all" approach to collocation.

Finally, ALTS alleges that "[i]n New York, Bell Atlantic has not even made available all of the technical specifications, business rules, and other technical and administrative information necessary for CLECs to complete the necessary OSS interfaces." ALTS Petition at 24. Once again, ALTS has the facts wrong. Bell Atlantic-New York has already provided competing carriers with four volumes of documentation that describes in meticulous detail the specifications of Bell Atlantic's OSS systems and interfaces. Moreover, Bell Atlantic-New York has implemented a process to keep competing carriers informed of changes to interfaces as they occur in the future.

Conclusion

The Commission should dismiss ALTS' petition to impose onerous regulations on advanced technology. The Commission should instead encourage the deployment of advanced telecommunications capability to all Americans through regulatory forbearance.

Respectfully submitted,

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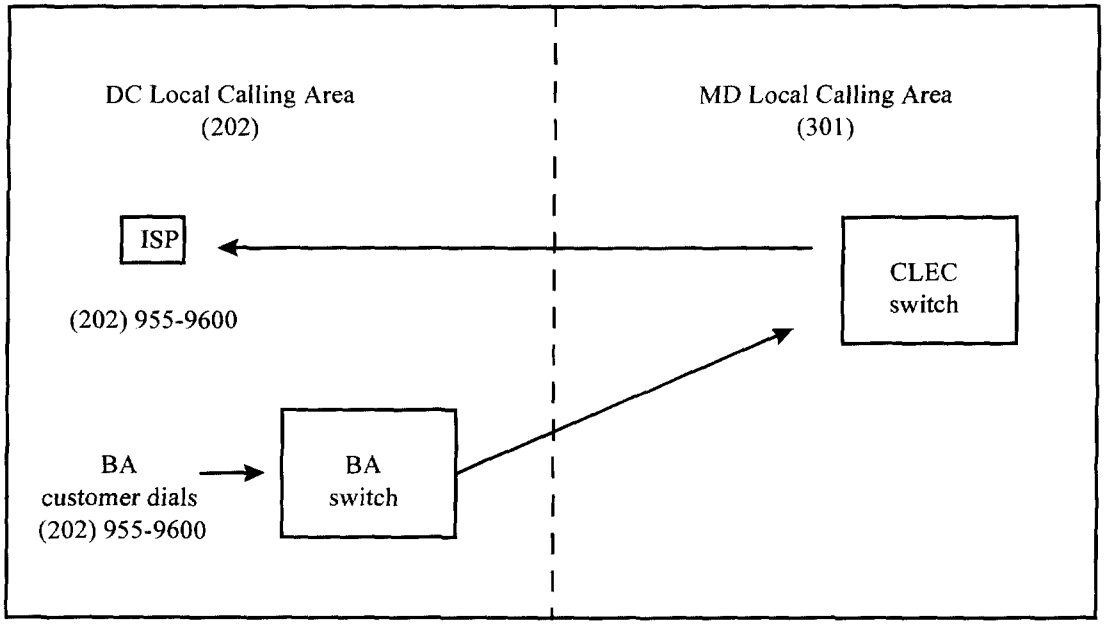
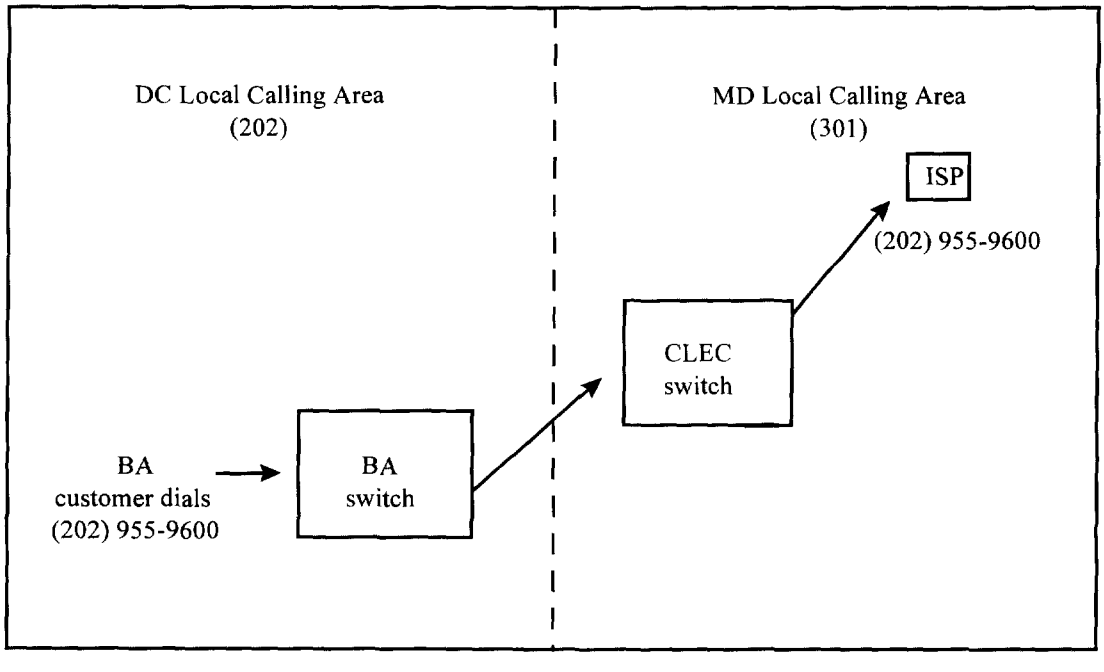
Attachment 1

ALTS' Erroneous Theory of Internet Reciprocal Compensation



CLEC Misuse of Numbering Assignments to Fraudulently Obtain Reciprocal Compensation



CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 1998 a copy of the foregoing "Comments of Bell Atlantic" was served on the parties on the attached list.

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